

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MESSIAH ALI BEY,

Plaintiff, :

REPORT & RECOMMENDATION

-against- :

05 Civ. 7910 (JSR) (MHD)

IBEW LOCAL UNION #3 et al., :

Defendants. :

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TO THE HONORABLE JED S. RAKOFF, U.S.D.J.:

Pro se plaintiff filed this lawsuit to complain of allegedly discriminatory behavior on the part of the International Brotherhood of Electricians, Local 3 in connection with plaintiff's continuing efforts to procure employment. He also named "Macy's Department Store" as a defendant, apparently because he lost, or was denied, a job on its premises, assertedly with the connivance of the union.

By motion dated January 30, 2006, plaintiff sought entry of a default against the union and its representatives for failure to respond to the complaint. Because we did not receive a response to the motion, we contacted counsel for the union, who advised us in writing that the complaint had not been served on the union or its representatives, but rather on the Joint Industry Board, an entity that shared space in the same building with the union. (April 3, 2006 letter to the Court from Norman Rothfeld, Esq.). By the same

communication, defendants waived this defense and advised us of their filing of an answer to the complaint. (Id.).

Under the circumstances, we conclude that plaintiff has not shown a basis for entry of a default. It appears that service was not properly accomplished, and defendants have in any event answered the complaint. Accordingly, we recommend that the plaintiff's motion be denied.

Pursuant to Rule 72 of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from this date to file written objections to this Report and Recommendation. Such objections shall be filed with the Clerk of the Court and served on all adversaries, with extra copies to be delivered to the chambers of the Honorable Jed S. Rakoff, Room 1340, and to the chambers of the undersigned, Room 1670, 500 Pearl Street, New York, New York 10007. Failure to file timely objections may constitute a waiver of those objections both in the District Court and on later appeal to the United States Court of Appeals. See Thomas v. Arn, 474 U.S. 140, 150 (1985); Small v. Secretary of Health and Human Services, 892 F.2d 15, 16 (2d Cir. 1989); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e).

Dated: New York, New York
April 25, 2006

RESPECTFULLY SUBMITTED,



MICHAEL H. DOLINGER
UNITED STATES MAGISTRATE JUDGE

Copies of the foregoing Report and Recommendation have been mailed
this date to:

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